

Docket No.: 22841-015

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

NICOLSON et al.

Serial No.: 09/640,526

Filed: August 17, 2000



Group Art Unit: 1714

Examiner: V. Jagannathan

For: EXTENDED WEAR OPHTHALMIC LENS

#6

INFORMATION DISCLOSURE STATEMENT
RE: AUSTRALIAN DEFENCE AND CROSS-CLAIM

Assistant Commissioner for Patents
Washington, DC 20231

Dear Sir:

In accordance with the provisions of 37 C.F.R. 1.56, 1.97 and 1.98, the attention of the Patent and Trademark Office is hereby directed to the documents listed on the attached form PTO-1449. It is respectfully requested that the documents be expressly considered during the prosecution of this application, and that the documents be made of record therein and appear among the "References Cited" on any patent to issue therefrom.

This Information Disclosure Statement is being filed more than three months after the U.S. filing date AND after the mailing date of the first Office Action on the merits, but before the mailing date of a Final Rejection or Notice of Allowance.

In accordance with 37 CFR 1.17(p), please charge the fee of \$180.00 to Deposit Account No. 50014.

The information provided in this IDS relate to a patent infringement litigation initiated by the Patent Owner. The litigation is styled *CIBA Vision Corporation v. Bausch and Lomb, Incorporated*, U.S. District Court for the Northern District of Georgia, Gainesville Division, Docket Civil No. 2:99-CV-034-WCO, filed March 8, 1999. The Patent Owner submits these documents for completeness of the record, along with the following description of the particular documents.

As set forth in the listed documents on the PTO 1449 Form, B&L has identified the prior art in the AUSTRALIAN DEFENCE AND CROSS-CLAIM which alleged that the counter part invention in Australia is not a patentable invention. Appendix A lists documents as the prior art list which have already been disclosed to the U.S. Patent and Trademark Office.

The use of the RD-677 extended wear soft contact lens from, at least as early as July 1993, by subjects at clinical trials carried out in Australia by the Cornea and Contact Lens Research Unit is not considered to be prior art in the United States. See IDS regarding B&L's RD-677 allegations.

Respectfully submitted,

MCDERMOTT, WILL & EMERY

Kenneth L. Cage
Registration No. 26,151

600 13th Street, N.W.
Washington, DC 20005-3096
(202) 756-8000 KLC:DB
Date: August 22, 2001
Facsimile: (202) 756-8087